



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

July 16, 1997

Honorable Antonio O. Garza, Jr.
Secretary of State of Texas
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Open Records Decision No. 656

Re: Whether section 552.027 of the Government Code applies to a request for voter registration information pursuant to section 18.008 of the Election Code when the request is made by an individual who is confined in a correctional facility (ORQ-18)

Dear Secretary Garza:

You were asked whether section 552.027 of the Government Code, which provides that a governmental body is not required to comply with a request for information from an individual who is confined in a correctional facility, applies to a request for voter registration information pursuant to section 18.008 of the Election Code, when the request is made by an individual who is confined in a correctional facility. Because the question involves the interrelationship between two areas of law, you have forwarded the question to our office for an opinion.

In 1995, the Texas Legislature enacted legislation that modified the requirement of a governmental body to provide, and the ability of incarcerated individuals to obtain, information under the Open Records Act. Section 1 of House Bill 949 amended the Open Records Act by adding section 552.027 of the Government Code, which provides as follows:

Sec. 552.027. REQUEST FOR INFORMATION FROM INCARCERATED INDIVIDUAL. (a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

(b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.

Gov't Code § 552.027 (as added by Acts 1995, 74th Leg., ch. 302, § 1).

Section 1.07(a) of the Penal Code provides in relevant part:

(14) "Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

Chapter 18 of the Election Code defines the procedures for identifying registered voters. Subchapter A, which includes sections 18.001 through 18.012, addresses voter registration lists. Section 18.008(a) of the Election Code provides that a "registrar shall furnish a copy of any [voter registration] list prepared under this subchapter to any person requesting it."

Thus, a county registrar is required by section 18.008(a) to provide a registration list to "any person requesting it," while section 552.027(a) of the Government Code gives a registrar the discretion to "accept or comply with" a request from an "individual who is imprisoned or confined in a correctional facility." As the definition of a "person" in section 18.008(a) presumably includes a person in prison, the statutory provisions conflict when a person in prison requests information made public under section 18.008 of the Election Code. If two statutes are in irreconcilable conflict, we apply the rule of statutory construction that the statute that was enacted at the later date prevails. Gov't Code § 311.025(a); *see also Olson v. Central Power and Light Co.*, 803 S.W.2d 808, 811 (Tex. App.—Corpus Christi 1991, writ denied). House Bill 949, which added section 552.027 to the Open Records Act, was enacted by the legislature on May 18, 1995. Act of 1995, 74th Leg., ch. 302 § 1. The mandatory access provision of section 18.008 of the Election Code was enacted in 1971. Act of 1971, 62nd Leg., ch. 25, § 1, at 49. As section 552.027 of the Government Code is the later enacted statute, it prevails over section 18.008(a) of the Election Code.

Moreover, the conclusion that section 552.027 of the Government Code prevails over section 18.008 of the Election Code in this instance is consistent with the legislature's intent in enacting section 552.027. To determine legislative intent, we must ascertain the purpose of the legislation and the evil to be remedied. See Gov't Code § 311.023; *Railroad Comm'n v. Olin Corp.*, 690 S.W. 628, 630 (Tex. App. -Austin 1985), *writ ref'd n.r.e.*, 701 S.W.2d 641 (Tex. 1985) (citing *Flowers v. Dempsey-Tegeler & Co., Inc.*, 472 S.W.2d 112 (Tex.1971)). The bill analysis for House Bill No. 949 describes the evil that this legislation was designed to remedy:

Currently, Texas inmates are able to receive information through Chapter [552], Government Code (Open Records Act). Through this avenue, inmates have been using information obtained through Chapter [552] to file bogus income tax returns on correctional officers, harass nurses at their home addresses, and send mail to the homes of Texas Department of Criminal Justice employees.

Tex. Sen. Criminal Justice Comm., Bill Analysis, Tex. H.B. 949, 74th Leg., R.S. (1995) (available through Senate Research Center).

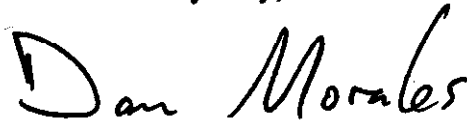
Section 18.005 of the Election Code provides that voter registration lists must contain the the voter's name, residence address, date of birth, and registration number. Thus, if section 18.008(a) were to prevail over section 552.027, inmates would have access to the addresses of correctional officers, nurses, and Texas Department of Criminal Justice employees whose interests section 552.027 was designed to protect. We decline to adopt such a construction.

We conclude that section 552.027 of the Government Code applies to a request for voter registration information under section 18.008 of the Election Code when the request is made by an individual who is confined in a correctional facility as defined by section 1.07(a) of the Penal Code. Therefore, a governmental body that receives a request for voter registration information under section 18.008 of the Election Code from an individual who is confined in a correctional facility has the discretion, under section 552.027 of the Government Code, to comply with the request or deny it in its entirety.

SUMMARY

A governmental body that receives a request for voter registration information under section 18.008 of the Election Code from an individual who is confined in a correctional facility has the discretion, under section 552.027 of the Government Code, to comply with the request or deny it in its entirety.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

DAVID A. TALBOT, JR.
Office of General Counsel

SANDRA L. COAXUM
Chief, Open Records Division

Prepared by Loretta R. DeHay
Deputy Chief, Open Records Division